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304.01.05 OBRA-93 AND DRA TRANSFER POLICY

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), herein referred to as OBRA-93, amended Section 1917 (c) (1) of the Social Security Act to revise transfer of assets policy previously described in the Medicare Catastrophic Coverage Act (MCCA) of 1988 (P.L. 100-360).

Assets disposed of on or before the enactment of OBRA-93, which was August 10, 1993, will be evaluated under MCCA policy. Assets disposed of on or after August 11, 1993, will be evaluated under policy mandated by OBRA-93 and revised by the Deficit Reduction Act of 2005, effective February 8, 2006.

304.01.05A DEFINITIONS APPLICABLE TO TRANSFERS AND TRUSTS

OBRA-93 added and amended the following definitions of terms used in conjunction with transfer and trust policy.

Individual—As used in this instruction, the term “individual” includes the individual himself or herself, as well as:

- The individual’s spouse, where the spouse is acting in the place or on behalf of the individual;
- A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual’s spouse, and
- Any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual’s spouse.

Spouses—This is a person who is considered legally married to an individual under the laws of Mississippi.

Assets—For purposes of this section, assets include all income and resources of the individual and of the individual’s spouse. This includes income or resources which the individual or the individual’s spouse is entitled to but does not receive because of any action by:

- The individual or the individual’s spouse;
- A person, including a court or administrative body, with legal authority to act in place or on behalf of the individual or the individual’s spouse, or

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- Any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

For purposes of this section, the term “assets an individual or spouse is entitled to” includes assets to which the individual is entitled or would be entitled if action had not been taken to avoid receiving the assets. The following are examples of actions which would cause income or resources not be received:

- Irrevocably waiving pension income;
- Waiving the right to receive an inheritance;
- Not accepting or accessing injury settlements;
- Tort settlements which are diverted by the defendant into a trust or similar device to be held for the benefit of an individual who is a plaintiff; and
- Refusal to take legal action to obtain a court ordered payment that is not being paid, such as child support or alimony.

The above actions could result in an uncompensated transfer of assets. However, the specific circumstances of each case must be examined in order to determine if a transfer has occurred.

Resources—For purposes of this section, the definition of resources is the same definition used by the Supplemental Security Income (SSI) program, except that the home is not excluded for institutionalized individuals. In determining whether a transfer of assets or a trust involves an SSI-countable resource, use those resource exclusions and disregards used by the SSI program, except for the exclusion of the home for institutionalized individuals. This is discussed in more detail elsewhere in this chapter.

Income—For purposes of this section, the definition of income is the same definition used by the SSI program. In determining whether a transfer of assets involves SSI-countable income, take into account those income exclusions and disregards used by the SSI program. This is discussed in more detail in the chapter on income.

For the Sole Benefit of—A transfer is considered to be for the sole benefit of a spouse, blind or disabled child or a disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

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Definitions Applicable to Transfers and Trusts (Continued)

For the Sole Benefit Of

Similarly, a trust is considered to be established for the sole benefit of a spouse, blind or disabled child, or disabled individual if the trust benefits no one but that individual, whether at the time the trust is established or any time in the future. However, the trust may provide for reasonable compensation for a trustee or trustees to manage the trust, as well as for reasonable cost associated with investing or otherwise managing the funds or property in the trust.

A transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse, blind or disabled child or disabled individual is not considered to be established for the sole benefit of one of these individuals. In order for a transfer or trust to be considered to be for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual on a basis that is actuarially sound based on the life expectancy of the individual involved. When the instrument or document does not so provide, any potential exemption from penalty consideration for eligibility purposes is void.

An exception to this requirement exists for trusts discussed in “Exemptions to Treatment of Trusts.” Under these exceptions, the trust instrument must provide that any funds remaining in the trust upon the death of the individual must go to the Division of Medicaid, up to the amount of Medicaid benefits paid on the individual’s behalf.

When these exceptions require that the trust be for the sole benefit of an individual, the restriction discussed in the previous paragraph does not apply when the trust instrument designates the Division of Medicaid as the recipient of funds from the trust. Also, the trust may provide for disbursement of funds to other beneficiaries, provided the trust does not permit such disbursements until the State’s claim is satisfied.